MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2016/2017

ULV4612 -LAW OF EVIDENCE I

(All Sections / Groups)

10 October 2016

Reading Time : 9.00am – 9.15am (15 Minutes)
Answering Time: 9.15am – 12.15pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 5 Questions only.

3. Answer any **FOUR** questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall only a CLEAN and ORIGINAL copy of the:

   i. EVIDENCE ACT 1950
   ii. EVIDENCE OF CHILD WITNESS ACT 2007; and
   iii. CRIMINAL PROCEDURE CODE

   Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

"To conclude that s 114A is a presumption of guilt, however, may not be entirely accurate. This is because firstly, it is a presumption that may apply also to civil cases, thus it is a misconceived notion to conclude that it automatically presumes guilt. Secondly, s 114A of the Evidence Act is not a provision that creates an offence in itself. It merely presumes the identity of the person responsible for the publication and the very act of publishing alone is neither an offence, nor does it attract liability. Culpability for such publication must have its basis in specific and substantive provisions of the law, which may require the burden to prove other elements beyond a reasonable doubt before a finding of liability or guilt may be made. ....Thirdly, although it is not explicit in the section, it is for the court ultimately to decide whether the presumption should be invoked. The court should have the discretion to do so, based on the facts and circumstances of the case."
(Mariette Peters, *"Section 114A ... A Presumption Of Guilt?"*, [2012] 6 MLJ ciii at cxviii)

Critically evaluate the above statement in the context of the impact section 114A of the Evidence Act 1950 on the burden of proof in criminal cases.

(Total: 25 marks)

QUESTION 2

"It is my view that an accused's right to remain silent is not at all infringed by the principle of 'if unrebutted would warrant a conviction'. It means what it says. The evidence adduced must be such that it must warrant a conviction if it is unrebutted. Therefore, the appellant's failure to call other witnesses to rebut the prosecution's case leaves the court with no other alternative but to convict him."

(Per Zulkefli Makinudin FCJ in ***Ahmad Najib Aris v. PP*** **[2009] 2 CLJ 800**)

Critically evaluate the above statement in the context of the interpretation and application of *prima facie* in Malaysia.

(Total: 25 marks)

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QUESTION 3

The accused Raj was charged with the murder of Malang and the charge reads as follows:

> "That you, on the 27th day of March 2015 at about 1.00 am at No10, Taman Bunga Raya, Bukit Beruang, Malacca (Malang's residence), did commit murder by causing the death of one Malang (M), 20 years old and that you thereby committed an offence punishable under Section 302 of the Penal Code."

The Defence has given an alibi notice under section 402A of the Criminal Procedure Code that at the time of the alleged offence, Raj was in Kuala Lumpur. Prosecution proposes to adduce the following evidence during trial:

a. evidence from Terang (PW2) who lives at No 9, Taman Bunga Raya, Bukit Beruang that he saw Raj leaving Malang's house at about 12 midnight on the 27th of March 2015. Terang had picked out Raj during the identification parade which was conducted in December 2015. Terang had made an earlier statement to the police that he could not see the man clearly as it was dark, but was positive that it was a young Indian man of average height and build. Raj was the only Indian man present during the identification parade. Advise the parties on the relevancy and admissibility of this evidence.

(8 marks)

b. evidence from Bijak (PW3), Malang's classmate, that Raj had previously quarrelled with Malang over some outstanding payments for car rental. Advise the parties on the relevancy and admissibility of this evidence.

(10 marks)

c. evidence that data obtained from a cell phone service provider shows that the cell phone number registered to Raj was located in the Bukit Beruang area at the time of the alleged offence. Advise the parties on the relevancy and admissibility of this evidence.

(7 marks)

(Total: 25 marks)

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QUESTION 4

Pelangi Builders Bhd. (Pelangi Builders) is an established property developer in Penang currently in the process of completing a major flagship project in Georgetown. Pelangi Builders had entered into a contract with Matahari Sdn. Bhd. (Matahari) as their main contractor for the project. Under the terms of the contract dated 1 April 2015, Pelangi Builders will release progressive payments to Matahari on completion of each stage of construction. The amount of progressive payments to be made is as fixed in Schedule 1 of the contract.

Following the release of the latest progressive payment by Pelangi Builders on 1 June 2016 for RM2 Million to Matahari a dispute arose between them. Matahari claims that the progressive payment which is due for latest work completed is RM 3 Million and has stopped all work until full settlement is made of the amount due and has initiated a civil action against Pelangi Builders. Counsel for Matahari adduces evidence of the amount of progressive payments to be made as fixed in Schedule 1 of the contract dated 1 April 2015, through the testimony of Mr Big, who is the current Managing Director of Finance for Matahari. Mr Big however does not have any personal knowledge of the contract and was not the person who executed the contract on behalf of Matahari as he had only recently been appointed to the position. The contract had been executed by Mr Kaya, the former Managing Director of Finance for Matahari who has since migrated to United Kingdom. Counsel for Pelangi Builders objects to the admissibility of Mr Big's testimony and further alleges that the terms, as reflected in Matahari's copy of the contract have been fraudulently altered.

Advise the trial judge on the following:

a. the admissibility of Mr Big's testimony on the terms of the contract;

(15 marks)

b. who bears the burden of proof on fraud and what is the standard of proof to establish fraud in the present case.

(10 marks)

(Total: 25 marks)

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QUESTION 5

The accused, Gila, a self-employed telecommunications contractor, was charged with two counts under s. 302 of the Penal Code for murdering two owners of an internet café which he frequented by bombing their home with a homemade explosive. The prosecution contended that the motive for the crime was a huge gambling debt owed by Gila to the two deceased; and that he was angry that they had refused further credit. The prosecution's narrative was that shortly after 2.00am on 29 August 2015, Gila had placed a homemade bomb concealed in a pomelo outside the victims' home, which then exploded causing their death. Police arrested Gila 26 days later at the house of his friend, Bijak where he had been staying.

The prosecution proposes to adduce the following evidence during trial:

a. Bijak's testimony that Gila had confessed to the bombing;

b. Following his arrest, Gila was subjected to long hours of interrogation and was not allowed to sleep for 36 hours. On the third day after his arrest, Inspector Cekap the investigating officer advised him in these words **"you better tell the truth if want to rest".** Gila immediately made the following statement **"I bombed them with mercun bola. If you take me to the belukar behind my house I can show you where I hid the left over mercun."** After making the statement Gila led the police to the place where they found 2 roles of fire crackers and a bottle of petrol.

Advise the parties on the admissibility of the confession and the statement made by Gila.

(Total: 25 marks)

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